

110TH CONGRESS
1ST SESSION

S. 2248

[Report No. 110–209]

To amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 26, 2007

Mr. ROCKEFELLER, from the Select Committee on Intelligence, reported the following original bill; which was read twice and placed on the calendar

NOVEMBER 1, 2007

Referred to the Committee on the Judiciary pursuant to section 3(b) of S. Res. 400, 94th Congress, as amended by S. Res. 445, 108th Congress, for a period not to exceed 10 days of session

A BILL

To amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Foreign Intelligence Surveillance Act of 1978 Amend-

1 ments Act of 2007” or the “FISA Amendments Act of
2 2007”.

3 (b) TABLE OF CONTENTS.—The table of contents for
4 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—FOREIGN INTELLIGENCE SURVEILLANCE

Sec. 101. Targeting the communications of certain persons outside the United States.

Sec. 102. Statement of exclusive means by which electronic surveillance and interception of domestic communications may be conducted.

Sec. 103. Submittal to Congress of certain court orders under the Foreign Intelligence Surveillance Act of 1978.

Sec. 104. Applications for court orders.

Sec. 105. Issuance of an order.

Sec. 106. Use of information.

Sec. 107. Amendments for physical searches.

Sec. 108. Amendments for emergency pen registers and trap and trace devices.

Sec. 109. Foreign Intelligence Surveillance Court.

Sec. 110. Technical and conforming amendments.

TITLE II—PROTECTIONS FOR ELECTRONIC COMMUNICATION SERVICE PROVIDERS

Sec. 201. Definitions.

Sec. 202. Limitations on civil actions for electronic communication service providers.

Sec. 203. Procedures for implementing statutory defenses under the Foreign Intelligence Surveillance Act of 1978.

Sec. 204. Preemption of State investigations.

Sec. 205. Technical amendments.

TITLE III—OTHER PROVISIONS

Sec. 301. Severability.

Sec. 302. Effective date; repeal; transition procedures.

5 **TITLE I—FOREIGN** 6 **INTELLIGENCE SURVEILLANCE**

7 **SEC. 101. TARGETING THE COMMUNICATIONS OF CERTAIN** 8 **PERSONS OUTSIDE THE UNITED STATES.**

9 (a) IN GENERAL.—The Foreign Intelligence Surveil-
10 lance Act of 1978 (50 U.S.C. 1801 et seq.) is amended—

11 (1) by striking title VII; and

1 (2) by adding after title VI the following new
2 title:

3 **“TITLE VII—ADDITIONAL PROCE-**
4 **DURES FOR TARGETING COM-**
5 **MUNICATIONS OF CERTAIN**
6 **PERSONS OUTSIDE THE**
7 **UNITED STATES**

8 **“SEC. 701. LIMITATION ON DEFINITION OF ELECTRONIC**
9 **SURVEILLANCE.**

10 “Nothing in the definition of electronic surveillance
11 under section 101(f) shall be construed to encompass sur-
12 veillance that is targeted in accordance with this title at
13 a person reasonably believed to be located outside the
14 United States.

15 **“SEC. 702. DEFINITIONS.**

16 “(a) IN GENERAL.—The terms ‘agent of a foreign
17 power’, ‘Attorney General’, ‘contents’, ‘electronic surveil-
18 lance’, ‘foreign intelligence information’, ‘foreign power’,
19 ‘minimization procedures’, ‘person’, ‘United States’, and
20 ‘United States person’ shall have the meanings given such
21 terms in section 101, except as specifically provided in this
22 title.

23 “(b) ADDITIONAL DEFINITIONS.—

1 “(1) CONGRESSIONAL INTELLIGENCE COMMIT-
2 TEES.—The term ‘congressional intelligence commit-
3 tees’ means—

4 “(A) the Select Committee on Intelligence
5 of the Senate; and

6 “(B) the Permanent Select Committee on
7 Intelligence of the House of Representatives.

8 “(2) FOREIGN INTELLIGENCE SURVEILLANCE
9 COURT; COURT.—The terms ‘Foreign Intelligence
10 Surveillance Court’ and ‘Court’ mean the court es-
11 tablished by section 103(a).

12 “(3) FOREIGN INTELLIGENCE SURVEILLANCE
13 COURT OF REVIEW; COURT OF REVIEW.—The terms
14 ‘Foreign Intelligence Surveillance Court of Review’
15 and ‘Court of Review’ mean the court established by
16 section 103(b).

17 “(4) ELECTRONIC COMMUNICATION SERVICE
18 PROVIDER.—The term ‘electronic communication
19 service provider’ means—

20 “(A) a telecommunications carrier, as that
21 term is defined in section 3 of the Communica-
22 tions Act of 1934 (47 U.S.C. 153);

23 “(B) a provider of electronic communica-
24 tions service, as that term is defined in section
25 2510 of title 18, United States Code;

1 “(C) a provider of a remote computing
2 service, as that term is defined in section 2711
3 of title 18, United States Code;

4 “(D) any other communication service pro-
5 vider who has access to wire or electronic com-
6 munications either as such communications are
7 transmitted or as such communications are
8 stored; or

9 “(E) an officer, employee, or agent of an
10 entity described in subparagraph (A), (B), (C),
11 or (D).

12 “(5) ELEMENT OF THE INTELLIGENCE COMMU-
13 NITY.—The term ‘element of the intelligence com-
14 munity’ means an element of the intelligence com-
15 munity specified in or designated under section 3(4)
16 of the National Security Act of 1947 (50 U.S.C.
17 401a(4)).

18 **“SEC. 703. PROCEDURES FOR ACQUIRING THE COMMU-
19 NICATIONS OF CERTAIN PERSONS OUTSIDE
20 THE UNITED STATES.**

21 “(a) AUTHORIZATION.—Notwithstanding any other
22 law, the Attorney General and the Director of National
23 Intelligence may authorize jointly, for periods of up to 1
24 year, the targeting of persons reasonably believed to be

1 located outside the United States to acquire foreign intel-
2 ligence information.

3 “(b) LIMITATIONS.—An acquisition authorized under
4 subsection (a)—

5 “(1) may not intentionally target any person
6 known at the time of acquisition to be located in the
7 United States;

8 “(2) may not intentionally target a person rea-
9 sonably believed to be outside the United States if
10 the purpose of such acquisition is to target for sur-
11 veillance a particular, known person reasonably be-
12 lieved to be in the United States, except in accord-
13 ance with title I; and

14 “(3) shall be conducted in a manner consistent
15 with the fourth amendment to the Constitution of
16 the United States.

17 “(c) UNITED STATES PERSONS LOCATED OUTSIDE
18 THE UNITED STATES.—

19 “(1) ACQUISITION INSIDE THE UNITED STATES
20 OF UNITED STATES PERSONS OUTSIDE THE UNITED
21 STATES.—An acquisition authorized by subsection
22 (a) that occurs inside the United States may not
23 target a United States person except in accordance
24 with the provisions of title I.

1 “(2) ACQUISITION OUTSIDE THE UNITED
2 STATES OF UNITED STATES PERSONS OUTSIDE THE
3 UNITED STATES.—An acquisition by an electronic,
4 mechanical, or other surveillance device outside the
5 United States may not intentionally target a United
6 States person reasonably believed to be outside the
7 United States to acquire the contents of a wire or
8 radio communication sent by or intended to be re-
9 ceived by that United States person under cir-
10 cumstances in which a person has a reasonable ex-
11 pectation of privacy and a warrant would be re-
12 quired for law enforcement purposes if the technique
13 were used inside the United States unless—

14 “(A) the Attorney General or the Attorney
15 General’s designee submits an application to
16 the Foreign Intelligence Surveillance Court that
17 includes a statement of the facts and cir-
18 cumstances relied upon by the applicant to jus-
19 tify the Attorney General’s belief that the tar-
20 get of the acquisition is a foreign power or an
21 agent of a foreign power; and

22 “(B) the Foreign Intelligence Surveillance
23 Court—

24 “(i) finds on the basis of the facts
25 submitted by the applicant there is prob-

1 able cause to believe that the target of the
2 electronic surveillance is a foreign power or
3 an agent of a foreign power; and

4 “(ii) issues an ex parte order as re-
5 quested or as modified approving the tar-
6 geting of that United States person.

7 “(3) PROCEDURES.—

8 “(A) SUBMITTAL TO FOREIGN INTEL-
9 LIGENCE SURVEILLANCE COURT.—Not later
10 than 30 days after the date of the enactment of
11 this title, the Attorney General shall submit to
12 the Foreign Intelligence Surveillance Court the
13 procedures to be utilized in determining wheth-
14 er a target reasonably believed to be outside the
15 United States is a United States person.

16 “(B) APPROVAL BY FOREIGN INTEL-
17 LIGENCE SURVEILLANCE COURT.—The proce-
18 dures submitted under subparagraph (A) shall
19 be utilized as described in that subparagraph
20 only upon the approval of the Foreign Intel-
21 ligence Surveillance Court.

22 “(C) UTILIZATION IN TARGETING.—Any
23 targeting of persons authorized by subsection
24 (a) shall utilize the procedures submitted under
25 subparagraph (A) as approved by the Foreign

1 Intelligence Surveillance Court under subpara-
2 graph (B).

3 “(d) CONDUCT OF ACQUISITION.—An acquisition au-
4 thorized under subsection (a) may be conducted only in
5 accordance with—

6 “(1) a certification made by the Attorney Gen-
7 eral and the Director of National Intelligence pursu-
8 ant to subsection (g); and

9 “(2) the targeting and minimization procedures
10 required pursuant to subsections (e) and (f).

11 “(e) TARGETING PROCEDURES.—

12 “(1) REQUIREMENT TO ADOPT.—The Attorney
13 General, in consultation with the Director of Na-
14 tional Intelligence, shall adopt targeting procedures
15 that are reasonably designed to ensure that any ac-
16 quisition authorized under subsection (a) is limited
17 to targeting persons reasonably believed to be lo-
18 cated outside the United States.

19 “(2) JUDICIAL REVIEW.—The procedures re-
20 ferred to in paragraph (1) shall be subject to judicial
21 review pursuant to subsection (i).

22 “(f) MINIMIZATION PROCEDURES.—

23 “(1) REQUIREMENT TO ADOPT.—The Attorney
24 General, in consultation with the Director of Na-
25 tional Intelligence, shall adopt, consistent with the

1 requirements of section 101(h), minimization proce-
2 dures for acquisitions authorized under subsection
3 (a).

4 “(2) JUDICIAL REVIEW.—The minimization
5 procedures required by this subsection shall be sub-
6 ject to judicial review pursuant to subsection (i).

7 “(g) CERTIFICATION.—

8 “(1) IN GENERAL.—

9 “(A) REQUIREMENT.—Subject to subpara-
10 graph (B), prior to the initiation of an acquisi-
11 tion authorized under subsection (a), the Attor-
12 ney General and the Director of National Intel-
13 ligence shall provide, under oath, a written cer-
14 tification, as described in this subsection.

15 “(B) EXCEPTION.—If the Attorney Gen-
16 eral and the Director of National Intelligence
17 determine that immediate action by the Govern-
18 ment is required and time does not permit the
19 preparation of a certification under this sub-
20 section prior to the initiation of an acquisition,
21 the Attorney General and the Director of Na-
22 tional Intelligence shall prepare such certifi-
23 cation, including such determination, as soon as
24 possible but in no event more than 168 hours
25 after such determination is made.

1 “(2) REQUIREMENTS.—A certification made
2 under this subsection shall—

3 “(A) attest that—

4 “(i) there are reasonable procedures
5 in place for determining that the acquisi-
6 tion authorized under subsection (a) is tar-
7 geted at persons reasonably believed to be
8 located outside the United States and that
9 such procedures have been approved by, or
10 will promptly be submitted for approval by,
11 the Foreign Intelligence Surveillance Court
12 pursuant to subsection (i);

13 “(ii) the procedures referred to in
14 clause (i) are consistent with the require-
15 ments of the fourth amendment to the
16 Constitution of the United States and do
17 not permit the intentional targeting of any
18 person who is known at the time of acqui-
19 sition to be located in the United States;

20 “(iii) a significant purpose of the ac-
21 quisition is to obtain foreign intelligence
22 information;

23 “(iv) the minimization procedures to
24 be used with respect to such acquisition—

1 “(I) meet the definition of mini-
2 mization procedures under section
3 101(h); and

4 “(II) have been approved by, or
5 will promptly be submitted for ap-
6 proval by, the Foreign Intelligence
7 Surveillance Court pursuant to sub-
8 section (i);

9 “(v) the acquisition involves obtaining
10 the foreign intelligence information from or
11 with the assistance of an electronic com-
12 munication service provider; and

13 “(vi) the acquisition does not con-
14 stitute electronic surveillance, as limited by
15 section 701; and

16 “(B) be supported, as appropriate, by the
17 affidavit of any appropriate official in the area
18 of national security who is—

19 “(i) appointed by the President, by
20 and with the consent of the Senate; or

21 “(ii) the head of any element of the
22 intelligence community.

23 “(3) LIMITATION.—A certification made under
24 this subsection is not required to identify the specific
25 facilities, places, premises, or property at which the

1 acquisition authorized under subsection (a) will be
2 directed or conducted.

3 “(4) SUBMISSION TO THE COURT.—The Attor-
4 ney General shall transmit a copy of a certification
5 made under this subsection, and any supporting affi-
6 davit, under seal to the Foreign Intelligence Surveil-
7 lance Court as soon as possible, but in no event
8 more than 5 days after such certification is made.
9 Such certification shall be maintained under security
10 measures adopted by the Chief Justice of the United
11 States and the Attorney General, in consultation
12 with the Director of National Intelligence.

13 “(5) REVIEW.—The certification required by
14 this subsection shall be subject to judicial review
15 pursuant to subsection (i).

16 “(h) DIRECTIVES.—

17 “(1) AUTHORITY.—With respect to an acquisi-
18 tion authorized under subsection (a), the Attorney
19 General and the Director of National Intelligence
20 may direct, in writing, an electronic communication
21 service provider to—

22 “(A) immediately provide the Government
23 with all information, facilities, or assistance
24 necessary to accomplish the acquisition in a
25 manner that will protect the secrecy of the ac-

1 quisition and produce a minimum of inter-
2 ference with the services that such electronic
3 communication service provider is providing to
4 the target; and

5 “(B) maintain under security procedures
6 approved by the Attorney General and the Di-
7 rector of National Intelligence any records con-
8 cerning the acquisition or the aid furnished that
9 such electronic communication service provider
10 wishes to maintain.

11 “(2) COMPENSATION.—The Government shall
12 compensate, at the prevailing rate, an electronic
13 communication service provider for providing infor-
14 mation, facilities, or assistance pursuant to para-
15 graph (1).

16 “(3) RELEASE FROM LIABILITY.—Notwith-
17 standing any other law, no cause of action shall lie
18 in any court against any electronic communication
19 service provider for providing any information, facili-
20 ties, or assistance in accordance with a directive
21 issued pursuant to paragraph (1).

22 “(4) CHALLENGING OF DIRECTIVES.—

23 “(A) AUTHORITY TO CHALLENGE.—An
24 electronic communication service provider re-
25 ceiving a directive issued pursuant to paragraph

1 (1) may challenge the directive by filing a peti-
2 tion with the Foreign Intelligence Surveillance
3 Court.

4 “(B) ASSIGNMENT.—The presiding judge
5 of the Court shall assign the petition filed
6 under subparagraph (A) to 1 of the judges serv-
7 ing in the pool established by section 103(e)(1)
8 not later than 24 hours after the filing of the
9 petition.

10 “(C) STANDARDS FOR REVIEW.—A judge
11 considering a petition to modify or set aside a
12 directive may grant such petition only if the
13 judge finds that the directive does not meet the
14 requirements of this section or is otherwise un-
15 lawful. If the judge does not modify or set aside
16 the directive, the judge shall immediately affirm
17 such directive, and order the recipient to com-
18 ply with the directive. The judge shall provide
19 a written statement for the record of the rea-
20 sons for a determination under this paragraph.

21 “(D) CONTINUED EFFECT.—Any directive
22 not explicitly modified or set aside under this
23 paragraph shall remain in full effect.

24 “(5) ENFORCEMENT OF DIRECTIVES.—

1 “(A) ORDER TO COMPEL.—In the case of
2 a failure to comply with a directive issued pur-
3 suant to paragraph (1), the Attorney General
4 may file a petition for an order to compel com-
5 pliance with the directive with the Foreign In-
6 telligence Surveillance Court.

7 “(B) ASSIGNMENT.—The presiding judge
8 of the Court shall assign a petition filed under
9 subparagraph (A) to 1 of the judges serving in
10 the pool established by section 103(e)(1) not
11 later than 24 hours after the filing of the peti-
12 tion.

13 “(C) STANDARDS FOR REVIEW.—A judge
14 considering a petition shall issue an order re-
15 quiring the electronic communication service
16 provider to comply with the directive if the
17 judge finds that the directive was issued in ac-
18 cordance with paragraph (1), meets the require-
19 ments of this section, and is otherwise lawful.
20 The judge shall provide a written statement for
21 the record of the reasons for a determination
22 under this paragraph.

23 “(D) CONTEMPT OF COURT.—Failure to
24 obey an order of the Court issued under this

1 paragraph may be punished by the Court as
2 contempt of court.

3 “(E) PROCESS.—Any process under this
4 paragraph may be served in any judicial district
5 in which the electronic communication service
6 provider may be found.

7 “(6) APPEAL.—

8 “(A) APPEAL TO THE COURT OF RE-
9 VIEW.—The Government or an electronic com-
10 munication service provider receiving a directive
11 issued pursuant to paragraph (1) may file a pe-
12 tition with the Foreign Intelligence Surveillance
13 Court of Review for review of the decision
14 issued pursuant to paragraph (4) or (5) not
15 later than 7 days after the issuance of such de-
16 cision. The Court of Review shall have jurisdic-
17 tion to consider such a petition and shall pro-
18 vide a written statement for the record of the
19 reasons for a decision under this paragraph.

20 “(B) CERTIORARI TO THE SUPREME
21 COURT.—The Government or an electronic com-
22 munication service provider receiving a directive
23 issued pursuant to paragraph (1) may file a pe-
24 tition for a writ of certiorari for review of the
25 decision of the Court of Review issued under

1 subparagraph (A). The record for such review
2 shall be transmitted under seal to the Supreme
3 Court of the United States, which shall have ju-
4 risdiction to review such decision.

5 “(i) JUDICIAL REVIEW.—

6 “(1) IN GENERAL.—

7 “(A) REVIEW BY THE FOREIGN INTEL-
8 LIGENCE SURVEILLANCE COURT.—The Foreign
9 Intelligence Surveillance Court shall have juris-
10 diction to review any certification required by
11 subsection (d) or targeting and minimization
12 procedures adopted pursuant to subsections (e)
13 and (f).

14 “(B) SUBMISSION TO THE COURT.—The
15 Attorney General shall submit to the Court any
16 such certification or procedure, or amendment
17 thereto, not later than 5 days after making or
18 amending the certification or adopting or
19 amending the procedures.

20 “(2) CERTIFICATIONS.—The Court shall review
21 a certification provided under subsection (g) to de-
22 termine whether the certification contains all the re-
23 quired elements.

24 “(3) TARGETING PROCEDURES.—The Court
25 shall review the targeting procedures required by

1 subsection (e) to assess whether the procedures are
2 reasonably designed to ensure that the acquisition
3 authorized under subsection (a) is limited to the tar-
4 geting of persons reasonably believed to be located
5 outside the United States.

6 “(4) MINIMIZATION PROCEDURES.—The Court
7 shall review the minimization procedures required by
8 subsection (f) to assess whether such procedures
9 meet the definition of minimization procedures
10 under section 101(h).

11 “(5) ORDERS.—

12 “(A) APPROVAL.—If the Court finds that
13 a certification required by subsection (g) con-
14 tains all of the required elements and that the
15 targeting and minimization procedures required
16 by subsections (e) and (f) are consistent with
17 the requirements of those subsections and with
18 the fourth amendment to the Constitution of
19 the United States, the Court shall enter an
20 order approving the continued use of the proce-
21 dures for the acquisition authorized under sub-
22 section (a).

23 “(B) CORRECTION OF DEFICIENCIES.—If
24 the Court finds that a certification required by
25 subsection (g) does not contain all of the re-

1 required elements, or that the procedures re-
2 quired by subsections (e) and (f) are not con-
3 sistent with the requirements of those sub-
4 sections or the fourth amendment to the Con-
5 stitution of the United States, the Court shall
6 issue an order directing the Government to, at
7 the Government’s election and to the extent re-
8 quired by the Court’s order—

9 “(i) correct any deficiency identified
10 by the Court’s order not later than 30 days
11 after the date the Court issues the order;
12 or

13 “(ii) cease the acquisition authorized
14 under subsection (a).

15 “(C) REQUIREMENT FOR WRITTEN STATE-
16 MENT.—In support of its orders under this sub-
17 section, the Court shall provide, simultaneously
18 with the orders, for the record a written state-
19 ment of its reasons.

20 “(6) APPEAL.—

21 “(A) APPEAL TO THE COURT OF RE-
22 VIEW.—The Government may appeal any order
23 under this section to the Foreign Intelligence
24 Surveillance Court of Review, which shall have
25 jurisdiction to review such order. For any deci-

1 sion affirming, reversing, or modifying an order
2 of the Foreign Intelligence Surveillance Court,
3 the Court of Review shall provide for the record
4 a written statement of its reasons.

5 “(B) CONTINUATION OF ACQUISITION
6 PENDING REHEARING OR APPEAL.—Any acqui-
7 sitions affected by an order under paragraph
8 (5)(B) may continue—

9 “(i) during the pending of any rehear-
10 ing of the order by the Court en banc; and

11 “(ii) during the pendency of any ap-
12 peal of the order to the Foreign Intel-
13 ligence Surveillance Court of Review.

14 “(C) CERTIORARI TO THE SUPREME
15 COURT.—The Government may file a petition
16 for a writ of certiorari for review of a decision
17 of the Court of Review issued under subpara-
18 graph (A). The record for such review shall be
19 transmitted under seal to the Supreme Court of
20 the United States, which shall have jurisdiction
21 to review such decision.

22 “(j) JUDICIAL PROCEEDINGS.—Judicial proceedings
23 under this section shall be conducted as expeditiously as
24 possible.

25 “(k) MAINTENANCE OF RECORDS.—

1 “(1) STANDARDS.—A record of a proceeding
2 under this section, including petitions filed, orders
3 granted, and statements of reasons for decision,
4 shall be maintained under security measures adopted
5 by the Chief Justice of the United States, in con-
6 sultation with the Attorney General and the Director
7 of National Intelligence.

8 “(2) FILING AND REVIEW.—All petitions under
9 this section shall be filed under seal. In any pro-
10 ceedings under this section, the court shall, upon re-
11 quest of the Government, review ex parte and in
12 camera any Government submission, or portions of
13 a submission, which may include classified informa-
14 tion.

15 “(3) RETENTION OF RECORDS.—A directive
16 made or an order granted under this section shall be
17 retained for a period of not less than 10 years from
18 the date on which such directive or such order is
19 made.

20 “(1) OVERSIGHT.—

21 “(1) SEMIANNUAL ASSESSMENT.—Not less fre-
22 quently than once every 6 months, the Attorney
23 General and Director of National Intelligence shall
24 assess compliance with the targeting and minimiza-

1 tion procedures required by subsections (e) and (f)
2 and shall submit each such assessment to—

3 “(A) the Foreign Intelligence Surveillance
4 Court; and

5 “(B) the congressional intelligence commit-
6 tees.

7 “(2) AGENCY ASSESSMENT.—The Inspectors
8 General of the Department of Justice and of any
9 element of the intelligence community authorized to
10 acquire foreign intelligence information under sub-
11 section (a)—

12 “(A) are authorized to review the compli-
13 ance of their agency or element with the tar-
14 geting and minimization procedures required by
15 subsections (e) and (f);

16 “(B) with respect to acquisitions author-
17 ized under subsection (a), shall review the num-
18 ber of disseminated intelligence reports con-
19 taining a reference to a United States person
20 identity and the number of United States per-
21 son identities subsequently disseminated by the
22 element concerned in response to requests for
23 identities that were not referred to by name or
24 title in the original reporting;

1 “(C) with respect to acquisitions author-
2 ized under subsection (a), shall review the num-
3 ber of targets that were later determined to be
4 located in the United States and the number of
5 persons located in the United States whose
6 communications were reviewed; and

7 “(D) shall provide each such review to—

8 “(i) the Attorney General;

9 “(ii) the Director of National Intel-
10 ligence; and

11 “(iii) the congressional intelligence
12 committees.

13 “(3) ANNUAL REVIEW.—

14 “(A) REQUIREMENT TO CONDUCT.—The
15 head of an element of the intelligence commu-
16 nity conducting an acquisition authorized under
17 subsection (a) shall direct the element to con-
18 duct an annual review to determine whether
19 there is reason to believe that foreign intel-
20 ligence information has been or will be obtained
21 from the acquisition. The annual review shall
22 provide, with respect to such acquisitions au-
23 thorized under subsection (a)—

24 “(i) an accounting of the number of
25 disseminated intelligence reports con-

1 taining a reference to a United States per-
2 son identity;

3 “(ii) an accounting of the number of
4 United States person identities subse-
5 quently disseminated by that element in re-
6 sponse to requests for identities that were
7 not referred to by name or title in the
8 original reporting; and

9 “(iii) the number of targets that were
10 later determined to be located in the
11 United States and the number of persons
12 located in the United States whose commu-
13 nications were reviewed.

14 “(B) USE OF REVIEW.—The head of each
15 element of the intelligence community that con-
16 ducts an annual review under subparagraph (A)
17 shall use each such review to evaluate the ade-
18 quacy of the minimization procedures utilized
19 by such element or the application of the mini-
20 mization procedures to a particular acquisition
21 authorized under subsection (a).

22 “(C) PROVISION OF REVIEW TO FOREIGN
23 INTELLIGENCE SURVEILLANCE COURT.—The
24 head of each element of the intelligence commu-
25 nity that conducts an annual review under sub-

1 paragraph (A) shall provide such review to the
2 Foreign Intelligence Surveillance Court.

3 “(4) REPORTS TO CONGRESS.—

4 “(A) SEMIANNUAL REPORT.—Not less fre-
5 quently than once every 6 months, the Attorney
6 General shall fully inform, in a manner con-
7 sistent with national security, the congressional
8 intelligence committees, the Committee on the
9 Judiciary of the Senate, and the Committee on
10 the Judiciary of the House of Representatives,
11 concerning the implementation of this Act.

12 “(B) CONTENT.—Each report made under
13 subparagraph (A) shall include—

14 “(i) any certifications made under
15 subsection (g) during the reporting period;

16 “(ii) any directives issued under sub-
17 section (h) during the reporting period;

18 “(iii) the judicial review during the re-
19 porting period of any such certifications
20 and targeting and minimization procedures
21 utilized with respect to such acquisition,
22 including a copy of any order or pleading
23 in connection with such review that con-
24 tains a significant legal interpretation of
25 the provisions of this Act;

1 “(iv) any actions taken to challenge or
2 enforce a directive under paragraphs (4) or
3 (5) of subsections (h);

4 “(v) any compliance reviews con-
5 ducted by the Department of Justice or
6 the Office of the Director of National In-
7 telligence of acquisitions authorized under
8 subsection (a);

9 “(vi) a description of any incidents of
10 noncompliance with a directive issued by
11 the Attorney General and the Director of
12 National Intelligence under subsection (h),
13 including—

14 “(I) incidents of noncompliance
15 by an element of the intelligence com-
16 munity with procedures adopted pur-
17 suant to subsections (e) and (f); and

18 “(II) incidents of noncompliance
19 by a specified person to whom the At-
20 torney General and Director of Na-
21 tional Intelligence issued a directive
22 under subsection (h);

23 “(vii) any procedures implementing
24 this section; and

1 “(viii) any annual review conducted
2 pursuant to paragraph (3).

3 **“SEC. 704. USE OF INFORMATION ACQUIRED UNDER SEC-**
4 **TION 703.**

5 “Information acquired from an acquisition conducted
6 under section 703 shall be deemed to be information ac-
7 quired from an electronic surveillance pursuant to title I
8 for purposes of section 106, except for the purposes of
9 subsection (j) of such section.”.

10 (b) TABLE OF CONTENTS.—The table of contents in
11 the first section of the Foreign Intelligence Surveillance
12 Act of 1978 (50 U.S.C. 1801 et seq.) is amended—

13 (1) by striking the item relating to title VII;

14 (2) by striking the item relating to section 701;

15 and

16 (3) by adding at the end the following:

“TITLE VII—ADDITIONAL PROCEDURES FOR TARGETING COMMU-
NICATIONS OF CERTAIN PERSONS OUTSIDE THE UNITED
STATES

“Sec. 701. Limitation on definition of electronic surveillance.

“Sec. 702. Definitions.

“Sec. 703. Procedures for acquiring the communications of certain persons out-
side the United States.

“Sec. 704. Use of information acquired under section 703.”.

17 (c) SUNSET.—

18 (1) IN GENERAL.—Except as provided in para-
19 graph (2), the amendments made by subsections

20 (a)(2) and (b) shall cease to have effect on Decem-
21 ber 31, 2013.

1 (2) CONTINUING APPLICABILITY.—Section
 2 703(h)(3) of the Foreign Intelligence Surveillance
 3 Act of 1978 (as amended by subsection (a)) shall re-
 4 main in effect with respect to any directive issued
 5 pursuant to section 703(h) of that Act (as so
 6 amended) during the period such directive was in ef-
 7 fect. The use of information acquired by an acquisi-
 8 tion conducted under section 703 of that Act (as so
 9 amended) shall continue to be governed by the provi-
 10 sions of section 704 of that Act (as so amended).

11 **SEC. 102. STATEMENT OF EXCLUSIVE MEANS BY WHICH**
 12 **ELECTRONIC SURVEILLANCE AND INTERCEP-**
 13 **TION OF DOMESTIC COMMUNICATIONS MAY**
 14 **BE CONDUCTED.**

15 (a) STATEMENT OF EXCLUSIVE MEANS.—Title I of
 16 the Foreign Intelligence Surveillance Act of 1978 (50
 17 U.S.C. 1801 et seq.) is amended by adding at the end
 18 the following new section:

19 “STATEMENT OF EXCLUSIVE MEANS BY WHICH ELEC-
 20 TRONIC SURVEILLANCE AND INTERCEPTION OF DO-
 21 MESTIC COMMUNICATIONS MAY BE CONDUCTED

22 “SEC. 112. Chapters 119 and 121 of title 18, United
 23 States Code, and this Act shall be the exclusive means by
 24 which electronic surveillance (as defined in section 101(f),
 25 regardless of the limitation of section 701) and the inter-

1 ception of domestic wire, oral, or electronic communica-
 2 tions may be conducted.”.

3 (b) TABLE OF CONTENTS.—The table of contents in
 4 the first section of the Foreign Intelligence Surveillance
 5 Act of 1978 (50 U.S.C. 1801 et seq.) is amended by add-
 6 ing after the item relating to section 111, the following:

“Sec. 112. Statement of exclusive means by which electronic surveillance and
 interception of domestic communications may be conducted.”.

7 **SEC. 103. SUBMITTAL TO CONGRESS OF CERTAIN COURT**
 8 **ORDERS UNDER THE FOREIGN INTEL-**
 9 **LIGENCE SURVEILLANCE ACT OF 1978.**

10 (a) INCLUSION OF CERTAIN ORDERS IN SEMI-AN-
 11 NUAL REPORTS OF ATTORNEY GENERAL.—Subsection
 12 (a)(5) of section 601 of the Foreign Intelligence Surveil-
 13 lance Act of 1978 (50 U.S.C. 1871) is amended by strik-
 14 ing “(not including orders)” and inserting “, orders,”.

15 (b) REPORTS BY ATTORNEY GENERAL ON CERTAIN
 16 OTHER ORDERS.—Such section 601 is further amended
 17 by adding at the end the following new subsection:

18 “(c) The Attorney General shall submit to the com-
 19 mittees of Congress referred to in subsection (a) a copy
 20 of any decision, order, or opinion issued by the court es-
 21 tablished under section 103(a) or the court of review es-
 22 tablished under section 103(b) that includes significant
 23 construction or interpretation of any provision of this Act

1 not later than 45 days after such decision, order, or opin-
2 ion is issued.”.

3 **SEC. 104. APPLICATIONS FOR COURT ORDERS.**

4 Section 104 of the Foreign Intelligence Surveillance
5 Act of 1978 (50 U.S.C. 1804) is amended—

6 (1) in subsection (a)—

7 (A) by striking paragraphs (2) and (11);

8 (B) by redesignating paragraphs (3)
9 through (10) as paragraphs (2) through (9), re-
10 spectively;

11 (C) in paragraph (5), as redesignated by
12 subparagraph (B) of this paragraph, by striking
13 “detailed”;

14 (D) in paragraph (6), as redesignated by
15 subparagraph (B) of this paragraph, in the
16 matter preceding subparagraph (A)—

17 (i) by striking “Affairs or” and insert-
18 ing “Affairs,”; and

19 (ii) by striking “Senate—” and insert-
20 ing “Senate, or the Deputy Director of the
21 Federal Bureau of Investigation, if des-
22 ignated by the President as a certifying of-
23 ficial—”;

24 (E) in paragraph (7), as redesignated by
25 subparagraph (B) of this paragraph, by striking

1 “statement of” and inserting “summary state-
2 ment of”;

3 (F) in paragraph (8), as redesignated by
4 subparagraph (B) of this paragraph, by adding
5 “and” at the end; and

6 (G) in paragraph (9), as redesignated by
7 subparagraph (B) of this paragraph, by striking
8 “; and” and inserting a period;

9 (2) by striking subsection (b);

10 (3) by redesignating subsections (c) through (e)
11 as subsections (b) through (d), respectively; and

12 (4) in paragraph (1)(A) of subsection (d), as re-
13 designated by paragraph (3) of this subsection, by
14 striking “or the Director of National Intelligence”
15 and inserting “the Director of National Intelligence,
16 or the Director of the Central Intelligence Agency”.

17 **SEC. 105. ISSUANCE OF AN ORDER.**

18 Section 105 of the Foreign Intelligence Surveillance
19 Act of 1978 (50 U.S.C. 1805) is amended—

20 (1) in subsection (a)—

21 (A) by striking paragraph (1); and

22 (B) by redesignating paragraphs (2)
23 through (5) as paragraphs (1) through (4), re-
24 spectively;

1 (2) in subsection (b), by striking “(a)(3)” and
2 inserting “(a)(2)”;

3 (3) in subsection (c)(1)—

4 (A) in subparagraph (D), by adding “and”
5 at the end;

6 (B) in subparagraph (E), by striking “;
7 and” and inserting a period; and

8 (C) by striking subparagraph (F);

9 (4) by striking subsection (d);

10 (5) by redesignating subsections (e) through (i)
11 as subsections (d) through (h), respectively;

12 (6) by amending subsection (e), as redesignated
13 by paragraph (5) of this section, to read as follows:

14 “(e)(1) Notwithstanding any other provision of this
15 title, the Attorney General may authorize the emergency
16 employment of electronic surveillance if the Attorney Gen-
17 eral—

18 “(A) determines that an emergency situation
19 exists with respect to the employment of electronic
20 surveillance to obtain foreign intelligence informa-
21 tion before an order authorizing such surveillance
22 can with due diligence be obtained;

23 “(B) determines that the factual basis for
24 issuance of an order under this title to approve such
25 electronic surveillance exists;

1 “(C) informs, either personally or through a
2 designee, a judge having jurisdiction under section
3 103 at the time of such authorization that the deci-
4 sion has been made to employ emergency electronic
5 surveillance; and

6 “(D) makes an application in accordance with
7 this title to a judge having jurisdiction under section
8 103 as soon as practicable, but not later than 168
9 hours after the Attorney General authorizes such
10 surveillance.

11 “(2) If the Attorney General authorizes the emer-
12 gency employment of electronic surveillance under para-
13 graph (1), the Attorney General shall require that the
14 minimization procedures required by this title for the
15 issuance of a judicial order be followed.

16 “(3) In the absence of a judicial order approving such
17 electronic surveillance, the surveillance shall terminate
18 when the information sought is obtained, when the appli-
19 cation for the order is denied, or after the expiration of
20 168 hours from the time of authorization by the Attorney
21 General, whichever is earliest.

22 “(4) A denial of the application made under this sub-
23 section may be reviewed as provided in section 103.

24 “(5) In the event that such application for approval
25 is denied, or in any other case where the electronic surveil-

1 lance is terminated and no order is issued approving the
2 surveillance, no information obtained or evidence derived
3 from such surveillance shall be received in evidence or oth-
4 erwise disclosed in any trial, hearing, or other proceeding
5 in or before any court, grand jury, department, office,
6 agency, regulatory body, legislative committee, or other
7 authority of the United States, a State, or political sub-
8 division thereof, and no information concerning any
9 United States person acquired from such surveillance shall
10 subsequently be used or disclosed in any other manner by
11 Federal officers or employees without the consent of such
12 person, except with the approval of the Attorney General
13 if the information indicates a threat of death or serious
14 bodily harm to any person.

15 “(6) The Attorney General shall assess compliance
16 with the requirements of paragraph (5).”; and

17 (7) by adding at the end the following:

18 “(i) In any case in which the Government makes an
19 application to a judge under this title to conduct electronic
20 surveillance involving communications and the judge
21 grants such application, upon the request of the applicant,
22 the judge shall also authorize the installation and use of
23 pen registers and trap and trace devices, and direct the
24 disclosure of the information set forth in section
25 402(d)(2).”.

1 **SEC. 106. USE OF INFORMATION.**

2 Subsection (i) of section 106 of the Foreign Intel-
3 ligence Surveillance Act of 1978 (8 U.S.C. 1806) is
4 amended by striking “radio communication” and inserting
5 “communication”.

6 **SEC. 107. AMENDMENTS FOR PHYSICAL SEARCHES.**

7 (a) APPLICATIONS.—Section 303 of the Foreign In-
8 telligence Surveillance Act of 1978 (50 U.S.C. 1823) is
9 amended—

10 (1) in subsection (a)—

11 (A) by striking paragraph (2);

12 (B) by redesignating paragraphs (3)
13 through (9) as paragraphs (2) through (8), re-
14 spectively;

15 (C) in paragraph (2), as redesignated by
16 subparagraph (B) of this paragraph, by striking
17 “detailed”;

18 (D) in paragraph (3)(C), as redesignated
19 by subparagraph (B) of this paragraph, by in-
20 serting “or is about to be” before “owned”; and

21 (E) in paragraph (6), as redesignated by
22 subparagraph (B) of this paragraph, in the
23 matter preceding subparagraph (A)—

24 (i) by striking “Affairs or” and insert-
25 ing “Affairs,”; and

1 (ii) by striking “Senate—” and insert-
2 ing “Senate, or the Deputy Director of the
3 Federal Bureau of Investigation, if des-
4 ignated by the President as a certifying of-
5 ficial—”; and

6 (2) in subsection (d)(1)(A), by striking “or the
7 Director of National Intelligence” and inserting “the
8 Director of National Intelligence, or the Director of
9 the Central Intelligence Agency”.

10 (b) ORDERS.—Section 304 of the Foreign Intel-
11 ligence Surveillance Act of 1978 (50 U.S.C. 1824) is
12 amended—

13 (1) in subsection (a)—

14 (A) by striking paragraph (1); and

15 (B) by redesignating paragraphs (2)
16 through (5) as paragraphs (1) through (4), re-
17 spectively; and

18 (2) by amending subsection (e) to read as fol-
19 lows:

20 “(e)(1) Notwithstanding any other provision of this
21 title, the Attorney General may authorize the emergency
22 employment of a physical search if the Attorney General—

23 “(A) determines that an emergency situation
24 exists with respect to the employment of a physical
25 search to obtain foreign intelligence information be-

1 fore an order authorizing such physical search can
2 with due diligence be obtained;

3 “(B) determines that the factual basis for
4 issuance of an order under this title to approve such
5 physical search exists;

6 “(C) informs, either personally or through a
7 designee, a judge of the Foreign Intelligence Surveil-
8 lance Court at the time of such authorization that
9 the decision has been made to employ an emergency
10 physical search; and

11 “(D) makes an application in accordance with
12 this title to a judge of the Foreign Intelligence Sur-
13 veillance Court as soon as practicable, but not more
14 than 168 hours after the Attorney General author-
15 izes such physical search.

16 “(2) If the Attorney General authorizes the emer-
17 gency employment of a physical search under paragraph
18 (1), the Attorney General shall require that the minimiza-
19 tion procedures required by this title for the issuance of
20 a judicial order be followed.

21 “(3) In the absence of a judicial order approving such
22 physical search, the physical search shall terminate when
23 the information sought is obtained, when the application
24 for the order is denied, or after the expiration of 168

1 hours from the time of authorization by the Attorney Gen-
2 eral, whichever is earliest.

3 “(4) A denial of the application made under this sub-
4 section may be reviewed as provided in section 103.

5 “(5)(A) In the event that such application for ap-
6 proval is denied, or in any other case where the physical
7 search is terminated and no order is issued approving the
8 physical search, no information obtained or evidence de-
9 rived from such physical search shall be received in evi-
10 dence or otherwise disclosed in any trial, hearing, or other
11 proceeding in or before any court, grand jury, department,
12 office, agency, regulatory body, legislative committee, or
13 other authority of the United States, a State, or political
14 subdivision thereof, and no information concerning any
15 United States person acquired from such physical search
16 shall subsequently be used or disclosed in any other man-
17 ner by Federal officers or employees without the consent
18 of such person, except with the approval of the Attorney
19 General if the information indicates a threat of death or
20 serious bodily harm to any person.

21 “(B) The Attorney General shall assess compliance
22 with the requirements of subparagraph (A).”.

23 (c) CONFORMING AMENDMENTS.—The Foreign Intel-
24 ligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.)
25 is amended—

1 (1) in section 304(a)(4), as redesignated by
2 subsection (b) of this section, by striking
3 “303(a)(7)(E)” and inserting “303(a)(6)(E)”; and

4 (2) in section 305(k)(2), by striking
5 “303(a)(7)” and inserting “303(a)(6)”.

6 **SEC. 108. AMENDMENTS FOR EMERGENCY PEN REGISTERS**
7 **AND TRAP AND TRACE DEVICES.**

8 Section 403 of the Foreign Intelligence Surveillance
9 Act of 1978 (50 U.S.C. 1843) is amended—

10 (1) in subsection (a)(2), by striking “48 hours”
11 and inserting “168 hours”; and

12 (2) in subsection (c)(1)(C), by striking “48
13 hours” and inserting “168 hours”.

14 **SEC. 109. FOREIGN INTELLIGENCE SURVEILLANCE COURT.**

15 (a) DESIGNATION OF JUDGES.—Subsection (a) of
16 section 103 of the Foreign Intelligence Surveillance Act
17 of 1978 (50 U.S.C. 1803) is amended by inserting “at
18 least” before “seven of the United States judicial cir-
19 cuits”.

20 (b) EN BANC AUTHORITY.—

21 (1) IN GENERAL.—Subsection (a) of section
22 103 of the Foreign Intelligence Surveillance Act of
23 1978, as amended by subsection (a) of this section,
24 is further amended—

25 (A) by inserting “(1)” after “(a)”; and

1 (B) by adding at the end the following new
2 paragraph:

3 “(2)(A) The court established under this subsection
4 may, on its own initiative, or upon the request of the Gov-
5 ernment in any proceeding or a party under section 501(f)
6 or paragraph (4) or (5) of section 703(h), hold a hearing
7 or rehearing, en banc, when ordered by a majority of the
8 judges that constitute such court upon a determination
9 that—

10 “(i) en banc consideration is necessary to se-
11 cure or maintain uniformity of the court’s decisions;
12 or

13 “(ii) the proceeding involves a question of ex-
14 ceptional importance.

15 “(B) Any authority granted by this Act to a judge
16 of the court established under this subsection may be exer-
17 cised by the court en banc. When exercising such author-
18 ity, the court en banc shall comply with any requirements
19 of this Act on the exercise of such authority.

20 “(C) For purposes of this paragraph, the court en
21 banc shall consist of all judges who constitute the court
22 established under this subsection.”.

23 (2) CONFORMING AMENDMENTS.—The Foreign
24 Intelligence Surveillance Act of 1978 is further
25 amended—

1 (A) in subsection (a) of section 103, as
2 amended by this subsection, by inserting “(ex-
3 cept when sitting en banc under paragraph
4 (2))” after “no judge designated under this
5 subsection”; and

6 (B) in section 302(c) (50 U.S.C. 1822(c)),
7 by inserting “(except when sitting en banc)”
8 after “except that no judge”.

9 (c) STAY OR MODIFICATION DURING AN APPEAL.—
10 Section 103 of the Foreign Intelligence Surveillance Act
11 of 1978 (50 U.S.C. 1803) is amended—

12 (1) by redesignating subsection (f) as sub-
13 section (g); and

14 (2) by inserting after subsection (e) the fol-
15 lowing new subsection:

16 “(f)(1) A judge of the court established under sub-
17 section (a), the court established under subsection (b) or
18 a judge of that court, or the Supreme Court of the United
19 States or a justice of that court, may, in accordance with
20 the rules of their respective courts, enter a stay of an order
21 or an order modifying an order of the court established
22 under subsection (a) or the court established under sub-
23 section (b) entered under any title of this Act, while the
24 court established under subsection (a) conducts a rehear-
25 ing, while an appeal is pending to the court established

1 under subsection (b), or while a petition of certiorari is
 2 pending in the Supreme Court of the United States, or
 3 during the pendency of any review by that court.

4 “(2) The authority described in paragraph (1) shall
 5 apply to an order entered under any provision of this
 6 Act.”.

7 **SEC. 110. TECHNICAL AND CONFORMING AMENDMENTS.**

8 Section 103(e) of the Foreign Intelligence Surveil-
 9 lance Act of 1978 (50 U.S.C. 1803(e)) is amended—

10 (1) in paragraph (1), by striking “105B(h) or
 11 501(f)(1)” and inserting “501(f)(1) or 703”; and

12 (2) in paragraph (2), by striking “105B(h) or
 13 501(f)(1)” and inserting “501(f)(1) or 703”.

14 **TITLE II—PROTECTIONS FOR**
 15 **ELECTRONIC COMMUNICA-**
 16 **TION SERVICE PROVIDERS**

17 **SEC. 201. DEFINITIONS.**

18 In this title:

19 (1) ASSISTANCE.—The term “assistance”
 20 means the provision of, or the provision of access to,
 21 information (including communication contents,
 22 communications records, or other information relat-
 23 ing to a customer or communication), facilities, or
 24 another form of assistance.

1 (2) CONTENTS.—The term “contents” has the
2 meaning given that term in section 101(n) of the
3 Foreign Intelligence Surveillance Act of 1978 (50
4 U.S.C. 1801(n)).

5 (3) COVERED CIVIL ACTION.—The term “cov-
6 ered civil action” means a civil action filed in a Fed-
7 eral or State court that—

8 (A) alleges that an electronic communica-
9 tion service provider furnished assistance to an
10 element of the intelligence community; and

11 (B) seeks monetary or other relief from the
12 electronic communication service provider re-
13 lated to the provision of such assistance.

14 (4) ELECTRONIC COMMUNICATION SERVICE
15 PROVIDER.—The term “electronic communication
16 service provider” means—

17 (A) a telecommunications carrier, as that
18 term is defined in section 3 of the Communica-
19 tions Act of 1934 (47 U.S.C. 153);

20 (B) a provider of an electronic communica-
21 tion service, as that term is defined in section
22 2510 of title 18, United States Code;

23 (C) a provider of a remote computing serv-
24 ice, as that term is defined in section 2711 of
25 title 18, United States Code;

1 (D) any other communication service pro-
2 vider who has access to wire or electronic com-
3 munications either as such communications are
4 transmitted or as such communications are
5 stored;

6 (E) a parent, subsidiary, affiliate, suc-
7 cessor, or assignee of an entity described in
8 subparagraph (A), (B), (C), or (D); or

9 (F) an officer, employee, or agent of an en-
10 tity described in subparagraph (A), (B), (C),
11 (D), or (E).

12 (5) ELEMENT OF THE INTELLIGENCE COMMU-
13 NITY.—The term “element of the intelligence com-
14 munity” means an element of the intelligence com-
15 munity specified in or designated under section 3(4)
16 of the National Security Act of 1947 (50 U.S.C.
17 401a(4)).

18 **SEC. 202. LIMITATIONS ON CIVIL ACTIONS FOR ELEC-**
19 **TRONIC COMMUNICATION SERVICE PRO-**
20 **VIDERS.**

21 (a) LIMITATIONS.—

22 (1) IN GENERAL.—Notwithstanding any other
23 provision of law, a covered civil action shall not lie
24 or be maintained in a Federal or State court, and

1 shall be promptly dismissed, if the Attorney General
2 certifies to the court that—

3 (A) the assistance alleged to have been
4 provided by the electronic communication serv-
5 ice provider was—

6 (i) in connection with an intelligence
7 activity involving communications that
8 was—

9 (I) authorized by the President
10 during the period beginning on Sep-
11 tember 11, 2001, and ending on Jan-
12 uary 17, 2007; and

13 (II) designed to detect or prevent
14 a terrorist attack, or activities in
15 preparation for a terrorist attack,
16 against the United States; and

17 (ii) described in a written request or
18 directive from the Attorney General or the
19 head of an element of the intelligence com-
20 munity (or the deputy of such person) to
21 the electronic communication service pro-
22 vider indicating that the activity was—

23 (I) authorized by the President;

24 and

25 (II) determined to be lawful; or

1 (B) the electronic communication service
2 provider did not provide the alleged assistance.

3 (2) REVIEW.—A certification made pursuant to
4 paragraph (1) shall be subject to review by a court
5 for abuse of discretion.

6 (b) REVIEW OF CERTIFICATIONS.—If the Attorney
7 General files a declaration under section 1746 of title 28,
8 United States Code, that disclosure of a certification made
9 pursuant to subsection (a) would harm the national secu-
10 rity of the United States, the court shall—

11 (1) review such certification in camera and ex
12 parte; and

13 (2) limit any public disclosure concerning such
14 certification, including any public order following
15 such an ex parte review, to a statement that the con-
16 ditions of subsection (a) have been met, without dis-
17 closing the subparagraph of subsection (a)(1) that is
18 the basis for the certification.

19 (c) NONDELEGATION.—The authority and duties of
20 the Attorney General under this section shall be performed
21 by the Attorney General (or Acting Attorney General) or
22 a designee in a position not lower than the Deputy Attor-
23 ney General.

24 (d) CIVIL ACTIONS IN STATE COURT.—A covered
25 civil action that is brought in a State court shall be

1 deemed to arise under the Constitution and laws of the
 2 United States and shall be removable under section 1441
 3 of title 28, United States Code.

4 (e) **RULE OF CONSTRUCTION.**—Nothing in this sec-
 5 tion may be construed to limit any otherwise available im-
 6 munity, privilege, or defense under any other provision of
 7 law.

8 (f) **EFFECTIVE DATE AND APPLICATION.**—This sec-
 9 tion shall apply to any covered civil action that is pending
 10 on or filed after the date of enactment of this Act.

11 **SEC. 203. PROCEDURES FOR IMPLEMENTING STATUTORY**
 12 **DEFENSES UNDER THE FOREIGN INTEL-**
 13 **LIGENCE SURVEILLANCE ACT OF 1978.**

14 The Foreign Intelligence Surveillance Act of 1978
 15 (50 U.S.C. 1801 et seq.), as amended by section 101, is
 16 further amended by adding after title VII the following
 17 new title:

18 **“TITLE VIII—PROTECTION OF**
 19 **PERSONS ASSISTING THE**
 20 **GOVERNMENT**

21 **“SEC. 801. DEFINITIONS.**

22 “In this title:

23 “(1) **ASSISTANCE.**—The term ‘assistance’
 24 means the provision of, or the provision of access to,
 25 information (including communication contents,

1 communications records, or other information relat-
2 ing to a customer or communication), facilities, or
3 another form of assistance.

4 “(2) ATTORNEY GENERAL.—The term ‘Attor-
5 ney General’ has the meaning give that term in sec-
6 tion 101(g).

7 “(3) CONTENTS.—The term ‘contents’ has the
8 meaning given that term in section 101(n).

9 “(4) ELECTRONIC COMMUNICATION SERVICE
10 PROVIDER.—The term ‘electronic communication
11 service provider’ means—

12 “(A) a telecommunications carrier, as that
13 term is defined in section 3 of the Communica-
14 tions Act of 1934 (47 U.S.C. 153);

15 “(B) a provider of electronic communica-
16 tions service, as that term is defined in section
17 2510 of title 18, United States Code;

18 “(C) a provider of a remote computing
19 service, as that term is defined in section 2711
20 of title 18, United States Code;

21 “(D) any other communication service pro-
22 vider who has access to wire or electronic com-
23 munications either as such communications are
24 transmitted or as such communications are
25 stored;

1 “(E) a parent, subsidiary, affiliate, suc-
2 cessor, or assignee of an entity described in
3 subparagraph (A), (B), (C), or (D); or

4 “(F) an officer, employee, or agent of an
5 entity described in subparagraph (A), (B), (C),
6 (D), or (E).

7 “(5) ELEMENT OF THE INTELLIGENCE COMMU-
8 NITY.—The term ‘element of the intelligence com-
9 munity’ means an element of the intelligence com-
10 munity as specified or designated under section 3(4)
11 of the National Security Act of 1947 (50 U.S.C.
12 401a(4)).

13 “(6) PERSON.—The term ‘person’ means—

14 “(A) an electronic communication service
15 provider; or

16 “(B) a landlord, custodian, or other person
17 who may be authorized or required to furnish
18 assistance pursuant to—

19 “(i) an order of the court established
20 under section 103(a) directing such assist-
21 ance;

22 “(ii) a certification in writing under
23 section 2511(2)(a)(ii)(B) or 2709(b) of
24 title 18, United States Code; or

1 “(iii) a directive under section
2 102(a)(4), 105B(e), as in effect on the day
3 before the date of the enactment of the
4 FISA Amendments Act of 2007 or 703(h).

5 “(7) STATE.—The term ‘State’ means any
6 State, political subdivision of a State, the Common-
7 wealth of Puerto Rico, the District of Columbia, and
8 any territory or possession of the United States, and
9 includes any officer, public utility commission, or
10 other body authorized to regulate an electronic com-
11 munication service provider.

12 **“SEC. 802. PROCEDURES FOR IMPLEMENTING STATUTORY**
13 **DEFENSES.**

14 “(a) REQUIREMENT FOR CERTIFICATION.—

15 “(1) IN GENERAL.—Notwithstanding any other
16 provision of law, no civil action may lie or be main-
17 tained in a Federal or State court against any per-
18 son for providing assistance to an element of the in-
19 telligence community, and shall be promptly dis-
20 missed, if the Attorney General certifies to the court
21 that—

22 “(A) any assistance by that person was
23 provided pursuant to an order of the court es-
24 tablished under section 103(a) directing such
25 assistance;

1 “(B) any assistance by that person was
2 provided pursuant to a certification in writing
3 under section 2511(2)(a)(ii)(B) or 2709(b) of
4 title 18, United States Code;

5 “(C) any assistance by that person was
6 provided pursuant to a directive under sections
7 102(a)(4), 105B(e), as in effect on the day be-
8 fore the date of the enactment of the FISA
9 Amendments Act of 2007, or 703(h) directing
10 such assistance; or

11 “(D) the person did not provide the alleged
12 assistance.

13 “(2) REVIEW.—A certification made pursuant
14 to paragraph (1) shall be subject to review by a
15 court for abuse of discretion.

16 “(b) LIMITATIONS ON DISCLOSURE.—If the Attorney
17 General files a declaration under section 1746 of title 28,
18 United States Code, that disclosure of a certification made
19 pursuant to subsection (a) would harm the national secu-
20 rity of the United States, the court shall—

21 “(1) review such certification in camera and ex
22 parte; and

23 “(2) limit any public disclosure concerning such
24 certification, including any public order following
25 such an ex parte review, to a statement that the con-

1 ditions of subsection (a) have been met, without dis-
2 closing the subparagraph of subsection (a)(1) that is
3 the basis for the certification.

4 “(c) REMOVAL.—A civil action against a person for
5 providing assistance to an element of the intelligence com-
6 munity that is brought in a State court shall be deemed
7 to arise under the Constitution and laws of the United
8 States and shall be removable under section 1441 of title
9 28, United States Code.

10 “(d) RELATIONSHIP TO OTHER LAWS.—Nothing in
11 this section may be construed to limit any otherwise avail-
12 able immunity, privilege, or defense under any other provi-
13 sion of law.

14 “(e) APPLICABILITY.—This section shall apply to a
15 civil action pending on or filed after the date of enactment
16 of the FISA Amendments Act of 2007.”.

17 **SEC. 204. PREEMPTION OF STATE INVESTIGATIONS.**

18 Title VIII of the Foreign Intelligence Surveillance
19 Act (50 U.S.C. 1801 et seq.), as added by section 203
20 of this Act, is amended by adding at the end the following
21 new section:

22 **“SEC. 803. PREEMPTION.**

23 “(a) IN GENERAL.—No State shall have authority
24 to—

1 “(1) conduct an investigation into an electronic
2 communication service provider’s alleged assistance
3 to an element of the intelligence community;

4 “(2) require through regulation or any other
5 means the disclosure of information about an elec-
6 tronic communication service provider’s alleged as-
7 sistance to an element of the intelligence community;

8 “(3) impose any administrative sanction on an
9 electronic communication service provider for assist-
10 ance to an element of the intelligence community; or

11 “(4) commence or maintain a civil action or
12 other proceeding to enforce a requirement that an
13 electronic communication service provider disclose
14 information concerning alleged assistance to an ele-
15 ment of the intelligence community.

16 “(b) SUITS BY THE UNITED STATES.—The United
17 States may bring suit to enforce the provisions of this sec-
18 tion.

19 “(c) JURISDICTION.—The district courts of the
20 United States shall have jurisdiction over any civil action
21 brought by the United States to enforce the provisions of
22 this section.

23 “(d) APPLICATION.—This section shall apply to any
24 investigation, action, or proceeding that is pending on or

1 filed after the date of enactment of the FISA Amendments
2 Act of 2007.”.

3 **SEC. 205. TECHNICAL AMENDMENTS.**

4 The table of contents in the first section of the For-
5 eign Intelligence Surveillance Act of 1978 (50 U.S.C.
6 1801 et seq.), as amended by section 101(b), is further
7 amended by adding at the end the following:

“TITLE VIII—PROTECTION OF PERSONS ASSISTING THE
GOVERNMENT

“Sec. 801. Definitions.

“Sec. 802. Procedures for implementing statutory defenses.

“Sec. 803. Preemption.”.

8 **TITLE III—OTHER PROVISIONS**

9 **SEC. 301. SEVERABILITY.**

10 If any provision of this Act, any amendment made
11 by this Act, or the application thereof to any person or
12 circumstances is held invalid, the validity of the remainder
13 of the Act, any such amendments, and of the application
14 of such provisions to other persons and circumstances
15 shall not be affected thereby.

16 **SEC. 302. EFFECTIVE DATE; REPEAL; TRANSITION PROCE-**
17 **DURES.**

18 (a) **IN GENERAL.**—Except as provided in subsection
19 (c), the amendments made by this Act shall take effect
20 on the date of the enactment of this Act.

21 (b) **REPEAL.**—

1 (1) IN GENERAL.—Except as provided in sub-
2 section (c), sections 105A, 105B, and 105C of the
3 Foreign Intelligence Surveillance Act of 1978 (50
4 U.S.C. 1805a, 1805b, and 1805c) are repealed.

5 (2) TABLE OF CONTENTS.—The table of con-
6 tents in the first section of the Foreign Intelligence
7 Surveillance Act of 1978 (50 U.S.C. 1801 et seq.)
8 is amended by striking the items relating to sections
9 105A, 105B, and 105C.

10 (c) TRANSITIONS PROCEDURES.—

11 (1) PROTECTION FROM LIABILITY.—Notwith-
12 standing subsection (b)(1), subsection (l) of section
13 105B of the Foreign Intelligence Surveillance Act of
14 1978 shall remain in effect with respect to any di-
15 rectives issued pursuant to such section 105B for in-
16 formation, facilities, or assistance provided during
17 the period such directive was or is in effect.

18 (2) ORDERS IN EFFECT.—

19 (A) ORDERS IN EFFECT ON DATE OF EN-
20 ACTMENT.—Notwithstanding any other provi-
21 sion of this Act or of the Foreign Intelligence
22 Surveillance Act of 1978—

23 (i) any order in effect on the date of
24 enactment of this Act issued pursuant to
25 the Foreign Intelligence Surveillance Act of

1 1978 or section 6(b) of the Protect Amer-
2 ica Act of 2007 (Public Law 110–55; 121
3 Stat. 556) shall remain in effect until the
4 date of expiration of such order; and

5 (ii) at the request of the applicant,
6 the court established under section 103(a)
7 of the Foreign Intelligence Surveillance Act
8 of 1978 (50 U.S.C. 1803(a)) shall reau-
9 thorize such order if the facts and cir-
10 cumstances continue to justify issuance of
11 such order under the provisions of such
12 Act, as in effect on the day before the date
13 of the enactment of the Protect America
14 Act of 2007, except as amended by sec-
15 tions 102, 103, 104, 105, 106, 107, 108,
16 and 109 of this Act.

17 (B) ORDERS IN EFFECT ON DECEMBER 31,
18 2013.—Any order issued under title VII of the
19 Foreign Intelligence Surveillance Act of 1978,
20 as amended by section 101 of this Act, in effect
21 on December 31, 2013, shall continue in effect
22 until the date of the expiration of such order.
23 Any such order shall be governed by the appli-
24 cable provisions of the Foreign Intelligence Sur-
25 veillance Act of 1978, as so amended.

1 (3) AUTHORIZATIONS AND DIRECTIVES IN EF-
2 FECT.—

3 (A) AUTHORIZATIONS AND DIRECTIVES IN
4 EFFECT ON DATE OF ENACTMENT.—Notwith-
5 standing any other provision of this Act or of
6 the Foreign Intelligence Surveillance Act of
7 1978, any authorization or directive in effect on
8 the date of the enactment of this Act issued
9 pursuant to the Protect America Act of 2007,
10 or any amendment made by that Act, shall re-
11 main in effect until the date of expiration of
12 such authorization or directive. Any such au-
13 thorization or directive shall be governed by the
14 applicable provisions of the Protect America Act
15 of 2007 (121 Stat. 552), and the amendment
16 made by that Act, and, except as provided in
17 paragraph (4) of this subsection, any acquisi-
18 tion pursuant to such authorization or directive
19 shall be deemed not to constitute electronic sur-
20 veillance (as that term is defined in section
21 101(f) of the Foreign Intelligence Surveillance
22 Act of 1978 (50 U.S.C. 1801(f)), as construed
23 in accordance with section 105A of the Foreign
24 Intelligence Surveillance Act of 1978 (50
25 U.S.C. 1805a)).

1 (B) AUTHORIZATIONS AND DIRECTIVES IN
2 EFFECT ON DECEMBER 31, 2013.—Any author-
3 ization or directive issued under title VII of the
4 Foreign Intelligence Surveillance Act of 1978,
5 as amended by section 101 of this Act, in effect
6 on December 31, 2013, shall continue in effect
7 until the date of the expiration of such author-
8 ization or directive. Any such authorization or
9 directive shall be governed by the applicable
10 provisions of the Foreign Intelligence Surveil-
11 lance Act of 1978, as so amended, and, except
12 as provided in section 704 of the Foreign Intel-
13 ligence Surveillance Act of 1978, as so amend-
14 ed, any acquisition pursuant to such authoriza-
15 tion or directive shall be deemed not to con-
16 stitute electronic surveillance (as that term is
17 defined in section 101(f) of the Foreign Intel-
18 ligence Surveillance Act of 1978, to the extent
19 that such section 101(f) is limited by section
20 701 of the Foreign Intelligence Surveillance Act
21 of 1978, as so amended).

22 (4) USE OF INFORMATION ACQUIRED UNDER
23 PROTECT AMERICA ACT.—Information acquired from
24 an acquisition conducted under the Protect America
25 Act of 2007, and the amendments made by that Act,

1 shall be deemed to be information acquired from an
2 electronic surveillance pursuant to title I of the For-
3 eign Intelligence Surveillance Act of 1978 (50
4 U.S.C. 1801 et seq.) for purposes of section 106 of
5 that Act (50 U.S.C. 1806), except for purposes of
6 subsection (j) of such section.

7 (5) NEW ORDERS.—Notwithstanding any other
8 provision of this Act or of the Foreign Intelligence
9 Surveillance Act of 1978—

10 (A) the government may file an application
11 for an order under the Foreign Intelligence
12 Surveillance Act of 1978, as in effect on the
13 day before the date of the enactment of the
14 Protect America Act of 2007, except as amend-
15 ed by sections 102, 103, 104, 105, 106, 107,
16 108, and 109 of this Act; and

17 (B) the court established under section
18 103(a) of the Foreign Intelligence Surveillance
19 Act of 1978 shall enter an order granting such
20 an application if the application meets the re-
21 quirements of such Act, as in effect on the day
22 before the date of the enactment of the Protect
23 America Act of 2007, except as amended by
24 sections 102, 103, 104, 105, 106, 107, 108,
25 and 109 of this Act.

1 (6) EXTANT AUTHORIZATIONS.—At the request
2 of the applicant, the court established under section
3 103(a) of the Foreign Intelligence Surveillance Act
4 of 1978 shall extinguish any extant authorization to
5 conduct electronic surveillance or physical search en-
6 tered pursuant to such Act.

7 (7) APPLICABLE PROVISIONS.—Any surveillance
8 conducted pursuant to an order entered pursuant to
9 this subsection shall be subject to the provisions of
10 the Foreign Intelligence Surveillance Act of 1978, as
11 in effect on the day before the date of the enactment
12 of the Protect America Act of 2007, except as
13 amended by sections 102, 103, 104, 105, 106, 107,
14 108, and 109 of this Act.

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